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No. 94-196

IN THE

Supreme Court of the United States

October Term, 1994

GROVE NORTH AMERICA, DIVISION OF KIDDE INDUSTRIES, INC., A CORPORATION,
Petitioner,
v.
RICHARD DOUGLAS LOWE and HONORABLE ROGER MONROE,
Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Alabama

BRIEF AMICUS CURIAE OF THE TEXAS JUSTICE FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether and in what circumstances the Due Process Clause of the Fourteenth Amendment requires disqualification of a state judge who receives campaign contributions or other financial benefits from a litigant or an attorney for a litigant in a case pending before the judge.

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INTEREST OF AMICUS CURIAE

The Texas Justice Foundation (the "Foundation") is a nonprofit corporation engaged in public interest litigation. The Foundation provides free legal representation in potentially landmark cases to enable impecunious litigants to seek to protect private or individual rights against illegal or unconstitutional incursions of government power. The Foundation accordingly supports and endorses government by rule of law and thus an independent, unbiased judiciary. The rule of law is significantly weakened, both in reality and perception, when judges accept significant campaign contributions or other financial benefits from parties or attorneys who appear before them. The Foundation submits

that due process should require both actual impartiality and the unquestionable appearance of impartiality in state judicial systems. All litigants must be equal before the law; justice should be blind. Financial contributions to judges, by contrast, make some litigants more equal than others and open the eyes of justice to considerations other than the rule of law. All parties have consented to the filing of this brief by the Texas Justice Foundation.

STATEMENT OF THE CASE

The direct payments by counsel to plaintiff in this case to the trial judge in this case raise in narrow terms the stark issue whether the Due Process Clause of the Fourteenth Amendment required the trial judge to disqualify himself from this particular case because of those payments. Because the due process concerns engendered by the facts of this case flow from the requirement that all litigation be resolved by an impartial tribunal, the case also necessarily raises -- particularly by reference to the Texas judicial system -- the broader issue of the due process limitations that should be imposed on an elected judiciary in the context of campaign contributions by active litigants or their attorneys.

SUMMARY OF ARGUMENT

The Foundation supports petitioner's third reason for granting a writ of certiorari in this case: namely, that the Petition presents an important federal question that should be resolved by this Court. All parties litigant are entitled to impartial tribunals to resolve disputes that are subject to state jurisdiction. The impartiality of state judiciaries, however, cannot be maintained unless this Court imposes meaningful constraints on the flow of money from affected litigants to state judges, particularly constraints on contributions to the campaigns of elected state judges.

ARGUMENT

By deciding the important question raised by petitioner, this Court would give the Texas courts and other state courts desperately needed guidance.

Virtually all members of the Texas judiciary are elected, unless initially appointed. Most Texas judges stand for periodic re-election. The Foundation is not aware of any Texas judge that has refused to accept contributions to his or her re-election campaign from lawyers with cases pending before the judge. Perhaps unsurprisingly, attorney campaign contributions to Texas judicial races have escalated to troublesome levels. The Texas Public Policy Foundation has found that "between July 1, 1991, and December 31, 1992, plaintiffs' personal injury trial lawyers contributed $1,493,330.16 or twenty-five percent of the total contributions ($5,999,349.97) to the six candidates for the Texas Supreme Court." An Analysis of Plaintiffs' Personal Injury Trial Lawyer Campaign Contributions to the Six Supreme Court Candidates in the Texas 1992 General Elections (San Antonio: The Texas Public Policy Foundation, January 1991). Another study, Political Contributions to the Supreme Court of Texas - An Appearance of Impropriety (September 2, 1992), states that "lawyers contributed 56% of all money raised by the successful Supreme Court Candidates in the 1988-1990 cycles." Particularly egregious connections between campaign contributions and judicial decisions caused television's 60 Minutes to ask: "Is Justice for Sale [in Texas]?." Texas' largest newspaper summed up the current state of affairs last year:

> There is virtual unanimity in the legal community and among the informed public that our current system of judicial campaign finance is broke. The national image of Texas

> as a state where "Justice is for sale" is fostered by continuing to sanction a system in which judges are forced to have their hands out --- usually to attorneys practicing in their court --- almost without cessation.

Judges and Dollars, Houston Chronicle, Nov. 7, 1993, Outlook Section, p.2. A former Texas Bar President has written that, "the problems [of judges raising funds from attorneys who practice before them] in Texas, unfortunately, are more severe then in other states." Charles Smith, *Judicial Fund Raising Rules Need to Be Changed*, Texas Lawyer, Jan. 27, 1992 at 10. See also Hon. Thomas Phillips, *Party, Money Shouldn't Decide Judicial Races*, Houston Chronicle, March 4, 1993 at A19 (current chief justice); Melanie Harrell, *Rid Harris County Family Courts of Cronyism*, Houston Chronicle, Jan. 27, 1994 at A21 (former chief justice calls Texas judicial system "the laughingstock of the nation.").

At least part of the reason for this deplorable state of affairs has been the inability (or unwillingness) of the Texas judiciary to resolve the propriety of these practices under state or federal law. As recently as last year a three judge intermediate appellate court in Texas split three ways in assessing the consequences of an attorney's contributions to a judge before whom he practiced. *Aguilar v. Anderson*, 855 S.W.2d 799 (Tex. App. -- El Paso [8th Dist.] 1993, writ denied) (one judge finding no amount of contributions would impair impartiality, one judge finding that contributions could impair impartiality but that the amount at issue did not, and one judge finding that the amount at issue did impair impartiality). The Texas Supreme Court has never directly addressed the issue, *Aguilar*, 855 S.W.2d at 810 (Barajas, J. concurring and dissenting), and as noted, decided not to review even the severe split in *Aguilar*. *Cf. Sun Exploration*

v. Jackson, 783 S.W.2d 202 (Tex. 1988) (discussing the effect of relations between attorney and judge on impartiality).

Indeed, it is not to be expected that Texas judges, who after all are products of such a system, will correctly resolve the issues raised by these now widespread practices. And counsel whose livelihood depends on appearance before these elected judges will be loathe to admit, and certainly hesitant to challenge, the impartiality caused by such practices -- after all, they too must participate in those practices to try to keep the courthouse "playing field" level.

It is therefore incumbent that the Court take the opportunity presented by this case to resolve the due process issues inherent in any practice that permits parties or counsel to pay money to state judges before whom they appear.

SUMMARY

In Texas, the ever-growing custom permitting attorneys to contribute to the campaigns of judges before whom they appear is undermining not only the judicial impartiality to which individúals are entitled under the Due Proce , Clause but also the basic respect citizens have for their state judiciary. The Texas Justice Foundation asks this Court to grant petitioner's writ and resolve the issue whether or to what extent a judge may preside over cases handled by an attorney who makes financial contributions to the judge.

September 2, 1994

Respectfully submitted,

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